

ASSEMBLY BILL

No. 1723

Introduced by Assembly Member Nazarian

February 14, 2014

An act to amend Section 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1723, as introduced, Nazarian. Employees: wages.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages. Existing law authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage fixed by an order of the commission or by statute.

Existing law subjects any employer, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission to a citation that includes a civil penalty, the payment of restitution of wages, and payment of liquidated damages to the employee. Existing law also provides for a penalty imposed upon an employer for the willful failure to timely pay wages of an employee who resigns or is discharged.

This bill would expand that penalty, restitution, and liquidated damages provision for a citation to also subject the employer to payment of any applicable penalties for the willful failure to timely pay wages of a resigned or discharged employee.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1197.1 of the Labor Code is amended to
2 read:
3 1197.1. (a) Any employer or other person acting either
4 individually or as an officer, agent, or employee of another person,
5 who pays or causes to be paid to any employee a wage less than
6 the minimum fixed by an order of the commission shall be subject
7 to a civil penalty, restitution of wages, ~~and~~ liquidated damages
8 payable to the employee, *and any applicable penalties imposed*
9 *pursuant to Section 203* as follows:
10 (1) For any initial violation that is intentionally committed, one
11 hundred dollars (\$100) for each underpaid employee for each pay
12 period for which the employee is underpaid. This amount shall be
13 in addition to an amount sufficient to recover underpaid ~~wages~~
14 ~~and wages~~, liquidated damages pursuant to Section 1194.2, *and*
15 *any applicable penalties imposed pursuant to Section 203*.
16 (2) For each subsequent violation for the same specific offense,
17 two hundred fifty dollars (\$250) for each underpaid employee for
18 each pay period for which the employee is underpaid regardless
19 of whether the initial violation is intentionally committed. This
20 amount shall be in addition to an amount sufficient to recover
21 underpaid ~~wages and wages~~, liquidated damages pursuant to
22 Section 1194.2, *and any applicable penalties imposed pursuant*
23 *to Section 203*.
24 (3) ~~Wages and Wages~~, liquidated damages, *and any applicable*
25 *penalties imposed pursuant to Section 203*, recovered pursuant to
26 this section shall be paid to the affected employee.
27 (b) If, upon inspection or investigation, the Labor Commissioner
28 determines that a person has paid or caused to be paid a wage less
29 than the minimum, the Labor Commissioner may issue a citation
30 to the person in violation. The citation may be served personally
31 or by registered mail in accordance with subdivision (c) of Section
32 11505 of the Government Code. Each citation shall be in writing
33 and shall describe the nature of the violation, including reference
34 to the statutory provision alleged to have been violated. The Labor
35 Commissioner promptly shall take all appropriate action, in

accordance with this section, to enforce the citation and to recover the civil penalty assessed, wages, ~~and~~ liquidated damages, *and any applicable penalties imposed pursuant to Section 203* in connection with the citation.

(c) (1) If a person desires to contest a citation or the proposed assessment of a civil penalty, wages, ~~and~~ liquidated damages, *and any applicable penalties imposed pursuant to Section 203* therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty, wages, ~~and~~ liquidated damages, *and any applicable penalties imposed pursuant to Section 203* shall be affirmed, modified, or dismissed.

(2) The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(d) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty, wages, ~~and~~ liquidated damages, *and any applicable penalties imposed pursuant to Section 203* is filed, a certified copy of the citation or proposed civil penalty, wages, ~~and~~ liquidated damages, *and any applicable penalties imposed pursuant to Section 203* may be filed by the Labor Commissioner

1 in the office of the clerk of the superior court in any county in
2 which the person assessed has or had a place of business. The
3 clerk, immediately upon the filing, shall enter judgment for the
4 state against the person assessed in the amount shown on the
5 citation or proposed assessment of a civil penalty, wages,~~and~~
6 liquidated damages, *and any applicable penalties imposed pursuant*
7 *to Section 203.*

8 (f) When findings and the order thereon are made affirming or
9 modifying a citation or proposed assessment of a civil penalty,
10 wages,~~and~~ liquidated damages, *and any applicable penalties*
11 *imposed pursuant to Section 203* after hearing, a certified copy of
12 these findings and the order entered thereon may be entered by
13 the Labor Commissioner in the office of the clerk of the superior
14 court in any county in which the person assessed has property or
15 in which the person assessed has or had a place of business. The
16 clerk, immediately upon the filing, shall enter judgment for the
17 state against the person assessed in the amount shown on the
18 certified order.

19 (g) A judgment entered pursuant to this section shall bear the
20 same rate of interest and shall have the same effect as other
21 judgments and be given the same preference allowed by the law
22 on other judgments rendered for claims for taxes. The clerk shall
23 make no charge for the service provided by this section to be
24 performed by him or her.

25 (h) The civil penalties provided for in this section are in addition
26 to any other penalty provided by law.

27 (i) This section shall not apply to any order of the commission
28 relating to household occupations.